THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 20712 of 2005

Dated : 21.09.2005

Between:

R. Nacharaiah, S/o. Sobhanadri,
(Ex-Incharge Secretary, The Kovvali L.S.C.S. Kovvali)

R/o. 4-104/1, Sainagar, Somavarapupadu,
Denduluru Mandal, W.G. District.

..... PETITIONER

AND

The Andhra Pradesh Co-operative Tribunal,

represented by its Registrar, Vijayawada and others.

… **RESPONDENTS**

ORDER:

The petitioner was in charge Secretary of the third respondent-Kovvali Large Sized Cooperative Society Limited, Kovvali, during the period from 2002 to 2004 and the fourth respondent was the President of the said Society. Based on the report of enquiry, which was conducted for misappropriation of funds, the petitioner and the fourth respondent were directed to pay Rs.5,06,860/- and Rs.6,32,867/-, respectively together with interest at 16% P.A. by the second respondent vide his order dated 10.05.2005. Aggrieved thereby, the petitioner has preferred an appeal in Sr.No.1641

of 2005 before the first respondent-Andhra Pradesh Cooperative Tribunal, Vijayawada, together with the applications for condoning the delay in filing the appeal and also seeking stay of the order dated 10.05.2005. The grievance of the petitioner is that, the first respondent, without considering the deposit of Rs.1,40,000/- made by the petitioner on 03.11.2003, 10.11.2003 and 02.12.2003 and attachment of his properties worth more than Rs.15 lakhs by the second respondent on 30.10.2003, passed orders dated 06.09.2005 on the stay petition directing the petitioner to remit 50% of the amount directed by the Society even before numbering the appeal. Challenging the same, the petitioner filed this writ petition.

Heard learned counsel for the petitioner and the learned Government Pleader for Cooperation appearing for the respondents
1 to 3.

Learned counsel for the petitioner contended that without numbering the appeal, the first respondent-Court has no power to pass orders on the stay application filed by the petitioner in the said appeal and that as the properties of the petitioner had already been attached, there is no need for payment of 50% of the alleged amount towards security.

On the other hand, learned Government Pleader for Cooperation opposed the same on the ground that passing the orders on stay application is at the discretion of the Court and it cannot be interfered with.

The first respondent Tribunal passed the impugned order dated 06.09.2005 directing the petitioner to deposit 50% of the amount directed to be paid under the order dated 10.05.2005. Admittedly, the appeal is not numbered. It is not brought to the notice of this Court that under what provision of Law interim order cannot be passed unless the appeal is numbered. Therefore, the contention of the learned counsel for the petitioner that unless the appeal is numbered, no interim orders can be passed, cannot be accepted. With regard to payment of 50% of the amount, simply because the properties of the petitioner are under attachment, it cannot be a ground to pass absolute stay of the proceedings in S.C.No.06-03-2004-C, dated 10.05.2005.

The proviso to Rule 11 of the Andhra Pradesh Cooperative Tribunal (procedure) Rules, 1964, shows that in case of misappropriation, either deposit of 50% of the amount or security can be furnished.

Therefore, the order of the Tribunal is modified directing the petitioner to furnish security for 50% of the amount, which was directed to be paid by him under the order dated 10.05.2005.

With the above observation, the writ petition is disposed of. No costs.

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21.09.2005

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